IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.03.2006

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mr.Justice P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.301 of 2006

Commissioner of Income-Tax,
Chennai. ... Appellant

Vs.

M/s.Indo Matsushita Carbon Co Ltd.,
III Floor, 77 (Old No.35),
N.H.Road,
Nungambakkam,
Chennai-600 034 ... Respondent

The above T.C.(Appeal) is preferred under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 10.8.2005 made in ITA Nos.968/Mds/2003 for the assessment year 1993-94 against the order of the Commissioner of Income Tax (Appeal) III, Chennai-34 dated 10.1.2003 and made in ITA.No.253/2002-03/A.III, against the order of the Deputy Commissioner of Income Tax, Company Circle II(3), Chennai-34 dated 28.3.2002 and made in GI.No./PA No.AAAC15679J/6-1 for the Assessment Year 1993-94.

For Appellant : Mr.J.Narayanaswamy

J U D G M E N T

(Judgment of the Court was made by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal ITA Nos.968/Mds/2003 dated 10.8.2005.

2.1. The Revenue is the appellant. The assessment year involved is 1993-94. The assessee is a company in which public are substantially interested. The assessee filed its return of income for the assessment year 1993-94 claiming a relief on interest on over

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dues from trade debtors under Section 80HH and 80I. The assessing officer disallowed the same on the ground that the interest was not derived from industrial activity and therefore, the assessee company is not eligible for deduction under Section 80HH and brought the same to tax. Aggrieved by the said order, the assessee preferred an appeal before the Appellate Commissioner of Income Tax, who, by an order dated 10.1.2003, confirmed the assessment order and held the issue in favour of the Revenue. Hence, the assessee preferred further appeal before the Appellate Tribunal, which, set aside the order of the Commissioner of Income Tax holding that the trade debtors are derived only from the industrial undertaking and hence they are to be considered for claiming the deduction under Section 80HH and 80I.

2.2. Aggrieved by the order of the Appellate Tribunal, the Revenue has filed the above appeal raising the following substantial question of law:

> "Whether in the facts and circumstances of the case, the Tribunal was right in holding that over dues from trade debtors is eligible for relief under Section 80HH and 80I?"

3. It is fairly conceded by the learned counsel appearing for the Revenue that the issue raised in the above question of law is covered against the Revenue by the decision of this Court in COMMISSIONER OF INCOME TAX VS. MADRAS MOTORS LTD./M.M.FORGINGS LTD. (257 ITR 60).

4. It is settled law that there can be no doubt that the interest earned on the belated payment would, however, be directly relatable to the business of the assessee of forgings. If the purchasers of the forgings did not make the payments for the forgings and then agree to pay the interest on the delayed payments, the said interest would have direct nexus with the business of forgings. The true test would be whether such interest would be available to the assessee otherwise also. The answer to the question would be certainly in the negative. The interest being directly relatable only to the amounts receivable by the assessee during the course of its business on account of the sale forgings, this interest would have to be included as the profits and gains derived from the business of the assessee-vide-COMMISSIONER OF INCOME TAX VS. MADRAS MOTORS LTD./M.M.FORGINGS LTD(257 ITR 60).

5. In view of the above well settled proposition of law, we do not find any error or infirmity in the order of the Appellate Tribunal, wherein the ratio laid down in the decision referred to above has been rightly followed and hence, the same is confirmed and

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the appeal is dismissed as no substantial question of law arises for consideration of this Court. No costs.

msk

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Registrar,
The Income Tax Appellate Tribunal
Madraa "A" Bench,
Rajaji Bhavan, Besant Nagar,
Madras-34

2. The Commissioner of Income Tax (Appeal) III,
Chennai-34.

3. The Deputy Commissioner of Income Tax
Company Circle II(3)
Chennai-34.

4. The Commissioner of Income Tax,
Chennai.

1 cc to Mr.Pushyasitaraman, Advocate, SR.10965

vc (co)

dv/2.5.06

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